THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13679 OF 2006

07.07.2006

Between:

Syed Abdul Majeed @ Mia Pasha,
And others

… Petitioners

AND

The Mandal Revenue Officer, Manchala Mandal
Ranga Reddy District
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13679 OF 2006

ORDER:

The petitioners 1, 2 and 4 claimed to be sons and third petitioner claimed to be daughter-in-law of late Syed Galib, who was allegedly a protected tenant to the extent of half share in the land admeasuring Acs.118.32 guntas in survey Nos.334 to 339, 341 and 342 situated at Nomula Village of Manchala Mandal in Ranga Reddy District (hereafter called, the subject land). The petitioners allege that they are in possession of the land after death of their predecessor. Gulam Mohammed, the father of the fourth respondent, dispossessed the petitioners from the land admeasuring Acs.9.20 guntas in survey No.339, but admitted that the petitioners are successors of protected tenant. The petitioners also referred to the suit being O.S.No.2 of 1967 filed by Gulam Mohammed – the landholder; against one Laxmana Rao, S/o.Narasimha Rao seeking correction of record of rights and appeal being A.S.No.30 of 1969 in which the claim of the petitioners as successors of protected tenant was allegedly accepted. Therefore, the petitioners contend that the petitioners are entitled to be treated as legal heirs of the protected tenant, Syed Galib, and recorded as such in the revenue records.

The petitioners filed an application in 2002 before the first respondent under Section 40 of the A.P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (the Act, for brevity) claiming succession as legal heirs of Syed Galib. After conducting enquiry and personal inspection, by proceedings dated 25.1.2005 granted succession to the petitioners in respect of the subject lands. Aggrieved by the same, the fourth respondent who had appeared before the second respondent and opposed the grant of succession to the petitioners preferred appeal under Section 90 of the Act. The first respondent allowed the appeal and set aside the proceedings of the Mandal Revenue Officer, Manchala Mandal (MRO), observing that the question of right of succession will not be amenable to a summary enquiry and that the same has to be adjudicated by civil court. This is assailed in the writ petition.

Learned Counsel for the petitioners strenuously contends that in a number of collateral proceedings the revenue officials as well as fourth respondent admitted that Syed Galib, the predecessor in title of the petitioners, was the protected tenant to the extent of half share and, therefore, under Section 40 of the Act, the petitioners being lineal descendants of Syed Galib, are entitled to inherit the lands as successors of protected tenant. Secondly and alternatively, learned Counsel for the petitioners would urge that when the Joint Collector came to the conclusion that in a summary enquiry, succession certificate cannot be granted by revenue authorities, he could not have made any observations regarding the status of the petitioners especially when the petitioners' application under Section 32 of the Act seeking declaration of possession is pending before the MRO. Learned Counsel for the petitioners placed reliance on **V.Narsa Reddy v S.Sattaiah**[1], **Ravinder Reddy v Ayyappa**[2], **B.Chandra Reddy v Smt.Pullamma**[3] and **Mir Sardar Ali v MRO, Keesara Mandal**[4].

Per contra, learned Assistant Government Pleader for Revenue (General) submits that Section 40 of the Act only declares that the protected tenancy is heritable and the same does not conform any power on the MRO to adjudicate the questions of succession. He placed reliance on an unreported judgment of this Court in **Sabavat Tulichya v The MRO, Amangal Mandal**[5].

There is no dispute that the petitioners made application before the second respondent under Section 40 of the Act for issuance of succession certificate in respect of half share of land in survey No.334 etc., situated at Nomula Village. The fourth respondent herein filed objections before the MRO *inter alia* contending that an application under Section 40 of the Act is not maintainable and that the father of the fourth respondent being the owner of the subject lands, the names of the petitioners and their sisters were mutated in the revenue records after death of the father. The second respondent considered the matter and allowed the application of the petitioners granting succession to them. Before the appellate authority, the first respondent herein, the fourth respondent again raised the question of jurisdiction of the second respondent to grant succession under the Act. It is for this reason, the first respondent referred to Section 40 of the Act and came

to the conclusion that claim for succession to protected tenancy after a long time cannot be entertained by the revenue authorities. While doing so, the first respondent also observed that protected tenancy is not proved.

The Act *inter alia*, is intended to regulate agricultural tenancy in Telangana Area of Andhra Pradesh, recognizes all persons lawfully cultivating the land belonging to another person to be tenant and give certain protection. A tenant who is cultivating the land for a period of not less than six years immediately preceding 01.1.1948 is deemed to be protected tenant and such protected tenant cannot be deprived of his right in the land to the extent of 60%. The protected tenant also cannot transfer his interest nor relinquish his interest without the prior permission of the revenue authorities. In the event of the tenant exercising option to purchase the land, such a right is also conferred on the protected tenant subject to payment of reasonable price of the landholder's interest as determined by Tenancy Tribunal (Deputy Collector). By A.P. Act No.15 of 1971, the Principal Act was amended inserting Section 38E of the Act, which conferred ownership on all the protected tenants in respect of the land which they are entitled to purchase from the landholders subject to the condition that such protected tenant does not hold any land as landholder.

The Act confers powers on the Tenancy Tribunal as defined under Section 2(w), as well as Tahsildar and Collector (Joint Collector). The Tenancy Tribunal is conferred with the power to decide questions of ownership under Section 38E and Tahsildar is conferred with the power to restore possession under Section 32 and/or Section 98 of the Act. The Collector/Joint Collector is absolute authority against the decisions of the Tribunal or Tahsildar, who are the primary authorities. The powers and functions are clearly delineated both by the provisions of the Act as well as the A.P. (Telangana Area) Tenancy & Agricultural Land Rules, 1950 (hereafter called, the Rules).

As noticed, Sections 32 and 98 of the Act confer powers on the Tahsildar (now redesignated as Mandal Revenue Officer) to restore possession to tenant or effect a person who is in unauthorized occupation of the land pursuant to a transfer, which is invalid under the Act. The Tenancy Tribunal/Deputy Collector is constituted as an authority to decide the question of ownership under Section 38E of the

Act as well as to determine the reasonable price and effect the purchase by the protected tenant of the landholder's interest. The Tahsildar is also conferred powers in the matter of deciding the claims of protected tenancy under Sections 34 to 37 of the Act. This aspect of the matter is regulated by the Rules. Therefore, one has to look to the various provisions of the Act and various Rules under the Act to decide the question whether the authorities under the Act – Joint Collector, Revenue Divisional Officer or Mandal Revenue Officer; are empowered to decide the disputed questions of succession to protected tenancy.

The various provisions which confer powers on the Revenue Authorities in the matter of various aspects of protected tenancy be it claim to protected tenancy, be it exercise of purchase of land at the landholder's interest, be it recognition of sale/relinquishment of protected tenancy or conferring of ownership rights or restoration of possession to the protected tenancy, there is no power conferred on any of the authorities to decide the questions of succession, though the Law declares that the rights of the protected tenant are heritable. Here, a reference may be made to Section 40 of the Act, which reads as under.

40. Rights of protected tenant heritable:-

(1) All rights of a protected tenant shall be heritable.
(2) If a protected tenant dies, his heir or heirs shall be entitled to hold the tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death and such heirs may, notwithstanding anything contained in this Act, sub-divide *inter se* according to their shares the land comprised in the tenancy to which they have succeeded.
(3) If a protected tenant dies without leaving any heirs, all his rights shall be extinguished.
Explanation:- The following persons shall be deemed to be the heirs of a protected tenant for the purposes of which section:-
(a) his legitimate lineal descendants by blood or adoption;
(b) in the absence of any such descendants, his widow for so long as she does not remarry;
(4) The interest of a protected tenant in the land held by him

> as a protected tenant shall form sixty per cent of the market value of all the interests in the land and that of the landholder and of persons claiming under him shall be limited to the remaining forty per cent.

Under the above provision, the interest of the protected tenant in the land held by him as a protected tenant shall form sixty per cent of the market value of all the interests in the land and if a protected tenant dies, his heirs shall be entitled to hold the tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death. This provision only recognizes the right of the legal heirs to hold the tenancy. In other words, the protected tenancy in respect of the land does not cease to operate even after death of the protected tenant and all the legal heirs lineal descendants (by blood or adoption) of protected tenant are entitled to hold. Here, it needs some clarification. As noticed supra, under the scheme of the Act, a person shall be deemed to be protected tenant if such person was holding the land as a tenant continuously for a period of six years prior to 01.1.1948 or for a period not less than six years wholly included for the Fasli years 1343 to 1352 or for a period not less than six years commencing not earlier than 1st day of Fasli year 1353 (06.10.1943) and completed before commencement of the Act. A person who is a protected tenant within such definition (Section 34 of the Act) is conferred the right to hold sixty per cent of the interest in the land, to cultivate the land, right against arbitrary eviction and also right to purchase the land. But the limited right of the protected tenant to the extent of sixty per cent in the land held as a protected tenant would cease at the moment a certificate of ownership under Section 38E of the Act is issued. By reason of the legislative declaration under subsection (1) of Section 38E of the Act, the ownership of the land held by protected tenant, which he is entitled to purchase from the landholder shall stand transferred to and vest in the protected tenant and from such date (the date notified by the Government i.e., 01.1.1973) shall be deemed to be the full owner of such land. For a better clarity, subsections (1) and (2) of Section 38E of the Act are extracted hereunder.

> **38-E. Ownership of lands held by protected tenants to stand transferred to them from a notified date:-**
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> (1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, judgment,

decree, contract or grant to the contrary, the Government may, by notification in the Andhra Pradesh Gazette, declare in respect of any area and from such date as may be specified therein, that ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in such area under any provision of this Chapter shall, subject to the condition laid down in sub-section (7) of Section 38, stand transferred to and vest in the protected tenants holding them and from such dte the protected tenants shall be deemed to be the full owners of such lands;

Provided that where in respect of any such land, any proceeding under Section 19 or Section 32 or Section 44 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date, on which such proceeding is finally decided, and when the tenant retains possession of the land in accordance with the decision in such proceeding.

(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal after holding such enquiry as may be prescribed, to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein:

Provided that where the land, the ownership of which has been transferred to the protected tenant under sub-section (1), is in the occupation of a person other than the protected tenant or holder of the certificate issued under this sub-section, it shall be lawful for the Tahsildar to restore the possession of the said land to the protected tenant or holder of the certificate, after giving notice of eviction to the occupant thereof, in the prescribed manner.

There cannot be any doubt that with effect from the date of notification issued by the Government of Andhra Pradesh, every protected tenant in telangana area shall be deemed to be the full owner of the land and the land shall stand transferred and vest in such protected tenant. Therefore, when once the land becomes absolute property of the protected tenant such property can be held by the protected tenant like any owner and the law of succession applies. In case of death of protected tenant, who obtained a certificate under Section 38E, it goes without saying, that property shall be deemed to be self acquired property and all the legal heirs can partition the same

or deal with the property as they like. Therefore, Section 40 of the Act, which declares right of protected tenancy heritable, would be insignificant. When such is the case, the question of MRO deciding issues of succession to the property held by protected tenant, which was latter stood transferred and vested by reason of subsection (1) of Section 38E of the Act would not arise.

The position in the case of protected tenancy in respect of which a certificate under Section 38E of the Act is not obtained is no different. Section 40 of the Act only declares that protected tenancy is heritable and that legitimate lineal descendants by blood or adoption of protected tenant shall be entitled to hold tenancy on the same terms and conditions on which such protected tenant was holding the land at the time of his death. The same does not confer any power on any revenue authority much less MRO to decide disputed questions of succession. For instance if a question arises as to whether a person claims that he is a legitimate lineal descendant by blood or adoption, can it be decided by MRO. Legitimacy of a child is a matter for the Court to decide determining on the evidence as well as legal presumptions well recognized in law. Similarly, if there is a dispute between two or more persons claiming to be lineal descendants of the protected tenant, if their predecessor had already obtained a certificate under Section 38E of the Act and became absolute owner, it is not for the MRO to decide the question. Similarly, in the case of a protected tenant, who did not obtain a certificate under Section 32 of the Act, the MRO cannot decide the question, though it can be a matter of enquiry under the Rules, which essentially deal with preparation of preliminary record of tenancies of agricultural lands.

The Rules made by the Government in accordance with powers under Section 97 of the Act contemplate preparation of preliminary record of tenancy within a period of one month from the date of publication of Rules, announcement by beat of drum, the list of or record of tenancies and obtaining objections by any person evicted. All theobjections initially are to be disposed of by the Patwari and forwarded to the Office of the Tahsildar for further enquiry whereupon the Tahsildar has to conduct further enquiry before amending the entries in the preliminary record of tenancies. Against the provisional record of tenancies prepared by the Patwari and Tahsildar an appeal is provided under Rule 11. Apart from this Rule 14 provides for recognition of the rights acquired subsequent to preparation of

preliminary or provisional record of tenancies. The same reads as under.

> **14. Acquisition of rights to be reported:-**
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> (i) Any person who after the preparation of the Preliminary or Provisional Record of Tenancies acquires any interest or right in land as a holder or a tenant in any village by succession, survivorship, inheritance, partition, purchase, gift or otherwise, shall report his acquisition of such an interest or right, orally or in writing to the Patwari of the village in which such land is situated or in writing to the Tahsildar of the area within one month from the date of such acquisition.
>
> Provided that if the person acquiring such interest or right in land is a minor or otherwise disqualified, his guardian having charge of his property shall make the report to the Patwari or the Tahsildar.
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> (ii) The patwari shall at once give a written acknowledgement of the report made to him under sub-rule (i) in Form II appended herewith to the person making it.
>
> (iii) The patwari shall immediately forward every report made to him under sub-rule (i) to the Tahsildar of the area.
>
> (iv) If the patwari has reason to believe that an acquisition of any interest or right in land of description referred to in sub-rule (i) has taken place, of which a report has not been made to him under that sub-rule, he shall immediately report such an acquisition to the Tahsildar of the area.

Here again any person who acquires any interest in the land either as a holder or a tenant by succession, survivorship, inheritance, partition, purchase, gift or otherwise, shall have to report such acquisition to the Tahsildar of the area, who shall enter such acquisition in the register of mutation. While dealing with the applications made under Rule 14, the Tahsildar however does not have the role of an adjudicator. It is a matter of simple verification and at that stage there would not be any necessity to issue notice to the landholder to raise objections.

Reading Section 40 of the Act and the Tenancy Rules together, it must be held that though under Section 40 of the Act, Tahsildar has no power to decide questions of succession to the protected tenancy, in the event of acquisition of rights, Tahsildar can conduct verification under Rule 14 of the Rules and order amendments in the register of mutations. Such a procedure is also contemplated under Section 4 of the A.P. Rights in Land and Pattadar Pass Book Act, 1971 and Rule

18 of the A.P. Rights in Land and Pattadar Pass Book Rules, 1989. The enquiry contemplated for amending mutation in the event of acquisition of rights either by survivorship or succession is altogether different from adjudicating the question of succession. Even while dealing with the application for recording for amendment of entries in the mutation register, if there is a dispute by the applicant, the MRO should relegate such party to the civil court.

This Court in an unreported judgment in W.P.No.7430 of 2000 held that the question as to who are the legal heirs of a deceased protected tenant has to be decided by a competent court of civil jurisdiction. A similar view was expressed in another unreported judgment in W.P. No.7018 of 2000. The decisions cited by the learned Counsel for the petitioner nowhere lay down that the Tahsildar/MRO is conferred with the power to decide questions of succession. By the very nature of enquiry involved in such application, the Tahsildar/MRO is not competent to decide questions of succession.

In this case, though the Joint Collector having regard to the provisions of Section 40 of the Act came to right conclusions, made passing observations that the petitioners failed to prove protected tenancy. Such an observation was not necessary. Therefore, as and when application under Section 32 of the Act is taken up by the jurisdictional MRO, the same has to be decided without any reference to the order of the Joint Collector. It is equally necessary that in the event of the petitioners approaching the civil court claiming succession, the civil court has to decide the matter independently without in any manner influenced by the observations made by the Joint Collector or this Court herein above.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

July 07, 2006

NOTE:

L.R.Copy be marked.

(By order)

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[1] 1979(2) APLJ 10 (SN)

[2] 1970(1) ALT 242

[3] 1987(2) ALT NRC 25

[4] 2004(4) ALT 443

[5] W.P.No.6043 of 2006 dated 27.3.2006

.. The procedure for conducting enquiry under Section 38E of the Act is contained under A.P. (Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973).